

Judgment by the Superior Court of Justice of Valencia, dated 14 September 2016 (STSJ 520/2016)

The Chamber for Contentious-Administrative Proceedings of the Superior Court of Justice of the Autonomous Region of Valencia, in its judgment of 14 September 2016, found that, for the purposes of payment of the Tax on the Increase in Value of Urban Land (IVTNU), also known as municipal capital gains tax, the sale-purchase deed of a property along with the deed recording subsequent work and the deed of transmission are elements of proof of impairment of the building's value. As a result, since the building's sale price is lower than the acquisition price, there is no taxable event and its payment is therefore not required.

In this judgement, the Superior Court of Valencia grants the appeal lodged by the mercantile company "Encuadernaciones Arpe, S.L." and cancels the tax payment by the Municipal Government of Paterna (Valencia), based on the transfer of a plot of land and industrial warehouse subsequently built on it.

According to the sale-purchase deed for the land on which the industrial warehouse was later built, dated 1987, the acquisition price for the plot was €69,717.40, while, according to the certificate of new construction, dated 1999, the value of construction value of the warehouse on the site was €264,445.32.

In 2014, the land and warehouse built thereon were jointly transferred the amount of €253,420.66, on which basis the Municipal Government of Paterna charged the owner of the land an amount of around €50,000 in municipal capital gains tax (IIVTNU). Said payment having been appealed against by the taxpayer, the Contentious-Administrative Court initially ruled in favour of the local government, and rejected the appeal.

The Superior Court of Justice of Valencia, having determined the issue to be decided, namely the existence or not of sufficient proof to conclude that the transfer price was effectively lower than the acquisition price, considered that the proof submitted in the legal proceedings did indeed show the reduction in the value of the building invoked by the plaintiff, and considered also that the land value and building value amply exceeded the value for which the property was transferred.

Consequently, since the subject of the transfer was a "single item (an indivisible body)", in which it is not possible to separate land and building, and considering that the capital gain applies to "the property on which a building has been erected", the Chamber of the Superior Court of Justice ruled "to accept the appeal lodged and grant the contentious-administrative recourse filed against the aforementioned payments."

Previously, administrative practice in connection with the application of this tax on the increase in the actual value of urban land consisted in taking as a reference solely the land registry value of the properties, without considering the actual depreciation of the property. As a result, municipal governments always collected this tax without any reference to the actual situation of the property sector in Spain in which, in recent years, after the property bubble burst and prices slumped, almost all transactions were being completed at much lower prices than their original acquisition prices, and establishing a fictitious capital gain linked to criteria independent of the actual value of the land and regardless of the existence or not of an actual increase in equity.